

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

Case No. 04-20015-CIV-Cooke  
Magistrate Judge McAliley

NIGHT BOX  
FILED

MAY 14 2015

THE STANDARD FIRE INSURANCE  
COMPANY d/b/a TRAVELERS PROPERTY  
CASUALTY,

Plaintiff,

v.

JACK NUDEL AKA JACOB NUDEL,  
and THE UNITED STATES OF AMERICA,

Defendants.

and

THE UNITED STATES OF AMERICA,

Cross Claim and Third Party  
Plaintiff,

v.

JACK NUDEL, *in personam*,  
and M/V GI JACK,  
Official No.1075520, *in rem*,

Cross Claim and Third Party  
Defendants.

CLARENCE MADDOX  
CLERK, U.S. DISTRICT COURT / MIA

CONSENT DECREE

This Consent Decree is made and entered into by and between the United States of  
America ("United States"), on behalf of the United States Department of the Interior, National

Park Service, and Jack Nudel, a/k/a Jacob Nudel (the "Settling Defendant").

### **BACKGROUND**

A. On November 12, 2001, Defendant Jacob Nudel ran his 46-foot motor vessel, the M/V GI Jack, aground in the vicinity of Biscayne Channel in the Safety Valve of Biscayne National Park.

B. The grounding of the GI Jack injured seagrass and seagrass habitat in Biscayne National Park.

C. Seagrass and seagrass habitat are Park System Resources under the Park System Resource Protection Act (PSRPA), 16 U.S.C. § 19jj et seq.

D. The National Park Service inspected the grounding site and mapped the injuries to the seagrass habitat between November 17 and December 10, 2001. The National Park Service documented four areas of impact, known as Features A, B, C, and D, where seagrass had been removed, with many portions of the scars measuring deeper than one foot.

E. Pursuant to the Park System Resource Protection Act (PSRPA), 16 U.S.C. § 19jj et seq., the United States filed a cross complaint against Nudel and a third party complaint against the M/V GI Jack for its response costs and damages arising from the grounding.

F. On December 10, 2004, this Court adjudged Nudel and the GI Jack liable under the Park System Resource Protection Act (PSRPA), 16 U.S.C. § 19jj-1(a), "for all response costs and damages arising from the grounding of the GI Jack in Biscayne National Park on November 12, 2001." December 10, 2004 Order for Partial Summary Judgment. This Court awarded a judgment for \$3,272.58 for response and damage assessment costs.

G. Pursuant to this Consent Decree, the Settling Defendant will implement the Restoration Project described in Attachment A to this Consent Decree to restore and replace the

natural resources injured by the grounding.

H. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and implementation of this Consent Decree will expedite the restoration of natural resources and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. The Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 16 U.S.C. § 19jj-2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 16 U.S.C. § 19jj-2.

### **II. PARTIES**

2. The parties to this Consent Decree are the United States of America, on behalf of the United States Department of the Interior, National Park Service and the Settling Defendant.

### **III. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in PSRPA shall have the meaning assigned to them in PSRPA. Whenever terms listed below are used in this Consent Decree or in the attachments attached hereto and incorporated hereunder, the following definitions shall apply:

A. The term "Consent Decree" means this document entitled "Consent Decree," all attachments thereto, and any modifications made pursuant to Section XX (Modifications).

B. The term "Costs" means the costs incurred by the United States in assessing the natural resources actually or potentially injured, destroyed, or lost as a result of the Grounding,

the response actions conducted by the National Park Service, and oversight costs to be incurred by the National Park Service.

C. The term "Date of Entry" means the date on which this Consent Decree is entered by the Clerk of Court after the United States has moved for entry and the District Court Judge has signed the Consent Decree.

D. The term "Date of Lodging" means the date that this Consent Decree is lodged with the Clerk of Court.

E. The term "Grounding" means the November 12, 2001 incident in which Nudel ran his vessel aground in Biscayne National Park, creating four areas of impact known as Features A, B, C and D.

F. The term "Natural Resource Damages" means compensation for the injuries to seagrass resources caused by the Grounding.

G. The term "Paragraph" means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

H. The term "Parties" means the United States and the Settling Defendant.

I. The term "Restoration Area" means the areas identified by the National Park Service as Feature A and Feature B and the site to be selected by the National Park Service for compensatory restoration, which will involve fill of approximately .19 cubic meters and planting of approximately 28.24 square meters.

J. "Restoration Project" shall mean the actions described in Attachment A to this Consent Decree.

K. The term "Section" means a portion of this Consent Decree identified by a Roman numeral.

L. "Settling Defendant" shall mean Jack Nudel, a/k/a Jacob Nudel, acting for himself and on behalf of the M/V GI Jack.

M. "United States" means the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation the National Park Service.

#### **IV. APPLICABILITY OF CONSENT DECREE**

4. This Consent Decree applies to and is binding upon the United States and the Settling Defendant and his heirs. Any transfer of assets or real or personal property shall in no way alter Defendant's rights or obligations under this Consent Decree.

5. The Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Restoration Project required by this Consent Decree and to each person representing the Settling Defendant with respect to the Restoration Project and shall condition all contracts entered into hereunder upon performance of the Restoration Project in conformity with the terms of the Consent Decree. The Settling Defendant or his contractor shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Restoration Project required by the Consent Decree. The Settling Defendant shall nonetheless be responsible for ensuring that his contractors and subcontractors perform the Restoration Projects contemplated herein in accordance with this Consent Decree.

6. Consent Decree Not a Permit. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal, State, or local statute or regulation. The United States does not, by its consent to this Consent Decree, warrant or aver in any manner that the Settling Defendant's compliance with this Consent Decree will constitute or result in compliance with the requirements of any Federal, State, and local laws and regulations which may be applicable to the implementation of any Restoration Project or other activities required by the

terms of this Consent Decree.

7. Responsibility for Compliance. Notwithstanding any action by the United States, including, without limitation, its review and approval of any design, plan, report, or other information or action formulated by the Settling Defendant under this Consent Decree, the Settling Defendant is and shall remain solely responsible for compliance with all terms and requirements of this Consent Decree, including those related to success criteria.

8. The United States may take any and all legal or administrative actions necessary to enforce the terms of this Consent Decree.

**V. NATURAL RESOURCE DAMAGE RESTORATION REQUIREMENTS**

9. This Consent Decree provides the terms upon which the United States and the Settling Defendant agree to settle the United States' claims for Natural Resource Damages and Costs.

10. The Settling Defendant shall fully restore or replace, as described in this Consent Decree, injured natural resources. The Settling Defendant shall satisfy this obligation by conducting the Restoration Project attached hereto as Attachment A.

11. Upon the National Park Service's determination that success criteria established pursuant to the Restoration Plan in Attachment A have been achieved, the National Park Service shall provide the Settling Defendant with a written statement certifying completion of the Restoration Project ("Certificate of Completion").

12. Settling Defendant shall comply with all applicable Federal, State, and local laws in implementing the Restoration Project.

13. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$150,000 in the form of a surety bond guaranteeing performance of the Restoration Project. Prior to commencement of the Restoration

Project under this Consent Decree, Settling Defendant shall provide to the United States a copy of such surety bond.

#### **VI. PAYMENT BY SETTLING DEFENDANT**

14. Within 30 days after the Date of Entry, the Settling Defendant shall pay the United States \$3,272.58 in reimbursement of the United States' damage assessment and response costs and \$7,000 toward the cost of National Park Service oversight of the Restoration Project. Payment of \$10,272.58 shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_\_ and DOJ case number 90-11-2-08248. Payment shall be made in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Florida following lodging of the Consent Decree. Any EFTs received at the U.S. DOJ lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. On the day that the transfer is made, the Settling Defendant shall send evidence of the transfer along with correspondence referencing this Consent Decree and the DOJ Case Number 90-11-2-08248 and the civil action case name and number to:

Department of the Interior  
Natural Resource Damage Assessment and Restoration Program  
Attn: Restoration Fund Manager  
1849 C Street, N.W.  
Mail Stop 4449  
Washington, D.C. 20240

and to:

Regional Solicitor  
Attn: Patricia Cortelyou-Hamilton  
United States Department of the Interior  
Office of the Solicitor, Southeast Region  
Richard B. Russell Federal Building, Room 304  
75 Spring Street, S.W.

Atlanta, GA 30303

and to:

Section Chief  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611  
DOJ Ref. No. 90-11-2-08248

In the event that any payments required by this Paragraph are not made by the 30th day after the Date of Entry, the Settling Defendant shall pay interest on the unpaid balance. Interest shall begin to accrue commencing on the 31st day after the Date of Entry and continue to accrue through the date of payment in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. All accrued interest shall be paid at the time the principal amount of Costs is paid.

## **VII. NOTICES**

15. The Settling Defendant shall provide information and notices required or occasioned under this Consent Decree, including notice of all payments, whether for Costs, interest, or stipulated penalties, and copies of written documents, including notices and reports, pertaining to dispute resolution to the United States, at the addresses specified below.

A. As to the United States Department of Justice:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
DOJ Ref. No. 90-11-2-08248

B. As to the National Park Service:



Regional Solicitor  
Attn: Patricia Cortelyou-Hamilton  
United States Department of the Interior  
Office of the Solicitor, Southeast Region  
Richard B. Russell Federal Building, Room 304  
75 Spring Street, S.W.  
Atlanta, GA 30303

and

Biscayne National Park  
c/o Amanda Bourque  
9700 S.W. 328<sup>th</sup> Street  
Homestead, FL 33033

16. The Settling Defendant hereby designates the following person as his representative for receipt of information and notices required or occasioned under this Consent Decree:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

17. Any Party may change the address and the person designated as its contact persons under Paragraph 15 or 16, respectively, by communicating such changes in writing to the other Party.

18. All notices and submissions shall be considered effective upon receipt by mail, unless otherwise provided. All notices shall be sent by first-class United States mail.

#### **VIII. INDEMNIFICATION AND INSURANCE**

19. The United States does not assume any liability by entering into this Consent Decree. The Settling Defendant shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendant, his employees, agents, contractors, subcontractors, and any

person acting on his behalf or under his control, in carrying out activities pursuant to this Consent Decree. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of the Settling Defendant, his employees, agents, contractors, subcontractors, and any persons acting on his behalf or under his control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of the Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor of the Settling Defendant shall be considered an agent of the United States.

20. The Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of constructing the Restoration Project, including, but not limited to, claims on account of construction delays. In addition, the Settling Defendant shall indemnify, save, and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of the Restoration Project including, but not limited to, claims on account of construction delays.

21. No later than 15 days before commencing any on-site work, Settling Defendant shall secure, and shall maintain, until the first anniversary of the Certificate of Completion pursuant to Paragraph 11, comprehensive general liability insurance with limits of \$1 million, combined single limit, naming the United States as an additional insured. In addition, until the

Certificate of Completion pursuant to Paragraph 11 is issued, Settling Defendant shall satisfy, or shall ensure that his contractors and/or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Restoration Project on behalf of the Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Restoration Project under this Consent Decree, Settling Defendant shall provide to the United States certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to the United States that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### **IX. FORCE MAJEURE**

22. "Force majeure," for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by the Settling Defendant, or of the Settling Defendants' contractor, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendant's best efforts to fulfill the obligation, except the obligations to make payments described in Section VI of this Consent Decree shall not be subject to force majeure. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the

delay is minimized to the greatest extent possible. "Force majeure," does not include financial inability to conduct the Restoration Project.

23. If any circumstance occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by force majeure, the Settling Defendant shall orally notify the United States within 48 hours of the time that the Settling Defendant first knew or should have known that the circumstances might cause a delay. Within 5 days thereafter, the Settling Defendant shall provide in writing to the United States a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; the Settling Defendant's rationale for attributing such a delay to a force majeure if he intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such circumstances may cause or contribute to an endangerment to public health or the environment. The Settling Defendant shall include with any notice all available documentation supporting his claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendant from asserting any claim of force majeure for that circumstance for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Defendant shall be deemed to know of any circumstances of which the Settling Defendant, any entity controlled by the Settling Defendant, or the Settling Defendant's contractor knew or should have known.

24. If the United States agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the United States for such time as is necessary to

complete the obligations. Any extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure, the United States will notify the Settling Defendant in writing of its decision. If the United States agrees that the delay is attributable to a force majeure, the United States will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

25. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), he shall do so no later than 15 days after receipt of the United States' notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 22 and 23, above. If the Settling Defendant carries this burden, the delay at issue shall not be deemed to be a violation by the Settling Defendant of the affected obligations of this Consent Decree identified to the United States and the Court.

#### **X. DISPUTE RESOLUTION**

26. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

27. Informal Dispute Resolution. If, in the opinion of the Settling Defendant, there is a dispute which arises under or with respect to this Consent Decree, Settling Defendant shall send written notice to the United States outlining the nature of the dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations shall not exceed 30 days from the date the notice is sent, unless this time period is modified by written agreement of the Parties.

28. Formal Dispute Resolution.

A. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the United States shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the Settling Defendant invokes the formal dispute resolution procedures of this Section. Settling Defendant shall invoke formal dispute resolution by serving the United States with a written Statement of Position on the matter in dispute including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Settling Defendant.

B. Within 60 days after receipt of the Settling Defendant's Statement of Position, the United States will serve on the Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States. Within 15 days after receipt of this Statement of Position, the Settling Defendant may submit a Reply.

C. An administrative record of the dispute shall be maintained by the United States and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the United States may allow submission

of supplemental statements of position by the Parties to the dispute.

D. The United States will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 28(C). This decision shall be binding on the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 28(E) and (F).

E. Any administrative decision made by the United States pursuant to this Paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt of the United States' decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Settling Defendant's motion.

F. In proceedings on any dispute governed by this Paragraph, the Settling Defendant shall have the burden of demonstrating that the decision of the United States is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision of the United States shall be on the administrative record compiled pursuant to Paragraph 28(C).

29. The invocation of informal or formal dispute resolution procedures pursuant to prior Paragraphs shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree that is not directly in dispute, unless the United States agrees or the Court rules otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the

Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

## **XI. STIPULATED PENALTIES**

30. The Settling Defendant shall be liable for stipulated penalties of \$250 per violation per day to the United States for failure to comply with the requirements of this Consent Decree. "Compliance" by the Settling Defendant shall include completion of the activities identified in Attachment A within the schedules established in Attachment A and in the Restoration Plan.

31. All penalties shall begin to accrue on the day after the Settling Defendant should have performed an obligation specified in the previous Paragraph and shall continue to accrue through the day the Settling Defendant complies with the obligation. However, stipulated penalties shall not accrue: (1) with respect to a decision by the United States under Paragraph 28(D) during the period, if any, beginning on the 21<sup>st</sup> day after the date that Settling Defendant's reply to the United States' Statement of Position is received until the date that the United States issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section X (Dispute Resolution), during the period, if any, beginning on the 31<sup>st</sup> day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

32. All penalties due under this Section shall be due and payable within thirty (30) days of the Settling Defendant's receipt of a demand for payment from the United States, unless the Settling Defendant invokes dispute resolution under Section X of this Consent Decree. If the Settling Defendant invokes dispute resolution under Section X, then stipulated penalties shall be due as specified in Paragraph 29.

A. All payments to the United States under this Section shall be paid by certified check



made payable to "U.S. Treasury." This payment shall be mailed to the U.S. Attorney's Office, Southern District of Florida, 99 NE 4th Street, Miami, FL 33132, referencing "Travelers v. Nudel and United States," USAO File Number: 04-20015-CIV-COOKE; DOJ Case No. 90-11-2-08248," and the name and address of the party making payment. Copies of the check and notice shall be sent to the United States as specified in Section VII (Notices).

33. In the event the Settling Defendant fails to pay stipulated penalties when due, the United States may institute a legal proceeding to collect such penalties, as well as interest accruing on any unpaid balance, as provided by law. Stipulated penalties continue to accrue during dispute resolution but are not due and payable until resolution of the dispute.

34. In the event that the United States assumes performance of a portion or all of the Restoration Project pursuant to Paragraph 38 (Work Takeover), Settling Defendant shall be liable for a stipulated penalty in the amount of \$50,000.

## **XII. COVENANTS NOT TO SUE BY THE UNITED STATES**

35. In consideration of the satisfactory performance by the Settling Defendant of all of his obligations under this Consent Decree, and except as provided in Paragraph 36, the United States hereby covenants not to sue or to take administrative action against the Settling Defendant or the M/V GI Jack for Natural Resource Damages. For the payment of Costs, these covenants not to sue shall take effect upon receipt by the United States of the full payment due pursuant to Paragraph 14 of this Consent Decree. With respect to all other obligations under this Consent Decree, these covenants not to sue shall take effect upon the issuance of the Certificate of Completion by the United States pursuant to Attachment A and the receipt by the United States of all payments due pursuant to Section VI (Payment by Settling Defendant) and Section XI (Stipulated Penalties), whichever occurs last. These covenants not to sue are conditioned upon

the satisfactory performance by the Settling Defendant of his obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

### **XIII. RESERVATION OF RIGHTS BY THE UNITED STATES**

36. Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial for the following:

- A. The Settling Defendant's failure to pay the United States' Costs, to complete the Restoration Project, or to comply with any other obligation or requirement of this Consent Decree;
- B. Claims brought on behalf of the United States, including Federal agencies, for costs, damages, and expenses of any sort, other than for Natural Resource Damages that are the subject of this Consent Decree;
- C. Liability for violations of Federal law which occur during or incident to the implementation of the Restoration Project or the preparation of the Restoration Completion Report;
- D. Any and all criminal liability; and
- E. Any matter not expressly included in the covenant not to sue for Natural Resource Damages set forth in Section XII (Covenants Not to Sue by the United States) of this Consent Decree.

37. The failure of the United States to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the United States' right to insist on prompt compliance in the future with

such provision, and shall not prevent a subsequent action by the United States to enforce such a provision.

38. Work Takeover. In the event the United States determines that the Settling Defendant has ceased implementation of any portion of the Restoration Project, is seriously or repeatedly deficient or late in his performance of the Restoration Project, or is implementing the Restoration Project in a manner which may cause an endangerment to human health or the environment, the United States may assume the performance of all or any portion of the Restoration Project as it determines necessary. The Settling Defendant may invoke the procedures set forth in Section X (Dispute Resolution) to dispute the United States' determination that takeover of the Restoration Project is warranted under this Paragraph. Costs incurred by the United States in performing the Restoration Project pursuant to this Paragraph shall be paid by the Settling Defendant.

39. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claim raised by the United States in subsequent proceedings were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XII (Covenants Not to Sue by the United States).

40. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all actions authorized by law.

#### **XIV. COVENANTS BY THE SETTling DEFENDANT**

41. The Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Grounding or this Consent Decree, including, but not limited to: any claims arising from or relating to the Restoration Project or the United States' oversight of the Restoration Project or approval of plans for such activities, and any claims under the United States Constitution, the Florida Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

42. The Settling Defendant hereby covenants not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States notifies him in writing that it no longer supports entry of the Consent Decree.

#### **XV. EFFECT OF SETTLEMENT**

43. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Natural Resource Damages against any person not a Party hereto.

#### **XVI. CERTIFICATION**

44. The Settling Defendant certifies that, to the best of his knowledge and belief, he has fully and accurately disclosed to the United States all information requested by the United States that is currently in the possession of the Settling Defendant or his officers, employees,

contractors, or agents.

45. Each undersigned representative of the Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

#### **XVII. ACCESS TO INFORMATION**

46. The Settling Defendant shall provide to the United States a full accounting of the costs of conducting the Restoration Project upon request. Settling Defendant shall provide the United States copies of all documents and information within his possession or control relating to the Restoration Projects or the implementation of this Consent Decree, including, but not limited to, sampling, analyses, invoices, receipts, reports, correspondence, or other documents or information related to the implementation of the Restoration Project. The Settling Defendant shall also make available to the United States, for purposes of investigation, information gathering, or testimony, his employees, agents, or representatives with knowledge of relevant facts concerning the implementation, condition, or performance of the Restoration Project.

47. Other Access Provisions: Notwithstanding any provision of this Consent Decree, the United States retains all access authorities and rights, including enforcement authorities related thereto, under applicable Federal or State statute or regulation.

#### **XVIII. COMPLIANCE WITH OTHER LAWS**

48. This Consent Decree shall not be construed in any way to relieve the Settling Defendant or any other person or entity from the obligation to comply with any Federal, State, or local law.

### **XIX. RETENTION OF JURISDICTION**

49. The Court shall retain jurisdiction of this matter for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the construction, implementation, resolution of disputes, or enforcement of this Consent Decree.

### **XX. MODIFICATION**

50. Any modification that materially alters a requirement of this Consent Decree must be approved by the Court.

51. Any modification to the Consent Decree, including the attachment thereto, that does not materially alter a requirement of this Consent Decree may be authorized by written agreement between the United States and the Settling Defendant, or in accordance with the dispute resolution process as provided in Section X (Dispute Resolution).

### **XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

52. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to a thirty-day (30) period for public notice and comment in accordance with and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice.

### **XXII. TERMINATION**

53. Any Party may file a Motion to the Court to terminate the Consent Decree after the Settling Defendant has made all payments required by this Consent Decree and the United States has issued the Certificate of Completion, pursuant to Paragraph 11. If a Party files a Motion to terminate the Consent Decree, then any other Party may file an opposition within ninety (90)

days. Termination of this Consent Decree shall not affect the covenants, reservations, and effects of settlement set forth in Section XII (Covenants Not to Sue by the United States); Section XIII (Reservation of Rights by the United States); Section XIV (Covenants by the Settling Defendant); and Section XV (Effect of Settlement).

### **XXIII. SIGNATORIES/SERVICE**

54. The Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on his behalf with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable rules of this Court, including, but not limited to, service of a summons.

55. This Consent Decree may be executed in counterparts and, as executed, shall constitute one agreement, binding on both of the Parties hereto.

### **XXIV. APPENDIX**

56. The following appendix is attached to and incorporated into this Consent Decree: "Attachment A" is the Restoration Project.

### **XXV. FINAL JUDGMENT**

57. This Consent Decree and its Appendix constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those contained expressly in this Consent Decree.

58. Upon approval and entry of this Consent Decree by the Court, this Consent Decree

shall constitute the final judgment between the United States and the Settling Defendant.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

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United States District Judge



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Standard Fire Insurance Co. d/b/a Travelers Property Casualty v. Nudel, and United States v. Nudel and M/V GI Jack.

FOR THE UNITED STATES OF AMERICA:

W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environment and Natural Resources Division  
U.S. Department of Justice

AMY R. GILLESPIE  
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Southern District of Florida

ANN ST. PETER-GRIFFITH  
Assistant U.S. Attorney  
U.S. Attorney's Office  
Federal Justice Building  
99 N.E. Fourth Street  
Miami, FL 33132  
Fla. Bar No 0033154

= 5/5/05

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Standard Fire Insurance Co., d/b/a Travelers Property Casualty v. Nudel, and United States v. Nudel and M/V GI Jack.

Date: April 21, 2005

\_\_\_\_\_  
Horace G. Clark  
Regional Solicitor  
United States Department of the Interior  
Office of the Solicitor, Southeast Region  
Richard B. Russell Federal Bldg.,  
Room 304  
75 Spring Street, S.W.  
Atlanta, Georgia 30303

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Standard Fire Insurance Co. d/b/a Travelers Property Casualty v. Nudel, and United States v. Nudel and M/V GI Jack, acting for himself and on behalf of the M/V GI Jack.

Date: 5/2/09

\_\_\_\_\_  
Signature

MICHAEL R. KARCHER,,  
as attorney for Jack Nudel, and the M/V GI Jack.  
Underwood, Karcher & Karcher, P.A.  
1500 San Remo Ave, Suite 235  
Coral Gables, Florida 33146

## **Attachment A**

### **Restoration Project**

The Restoration Project consists of the following:

1. Contractor/subcontractors. Within 30 days of entry of the Consent Decree, Settling Defendant shall choose contractors and subcontractors, if any, to conduct the Restoration Project, subject to the approval of the National Park Service (NPS). The National Park Service approves Seagrass Recovery, Inc. as Settling Defendant's contractor to conduct the Restoration Project.
2. Site Survey. Within 60 days of entry of the Consent Decree, and with at least 10 business days' notice to the National Park Service, Settling Defendant shall conduct a formal survey of the Restoration Area and locate and identify proposed donor plant locations for seagrass planting materials. The donor plant locations are subject to the approval of the National Park Service.
3. Restoration Plan. Within 90 days of entry of the Consent Decree, Settling Defendant shall create a Restoration Plan to restore seagrass using the filling and planting method described in the December 30, 2004 Addendum to the Expert Report of Roy R. Lewis, III, with primary restoration of Features A and B (filling and planting A and planting B) and compensatory restoration of a site to be selected by the National Park Service involving fill of approximately .19 cubic meters and planting of approximately 28.24 square meters. The Restoration Plan shall provide for the following steps in the Restoration Area: installation of seagrass protection markers; removal and holding for planting the existing seagrass; collection of additional plant donor material; installation of turbidity screening; filling of holes; smoothing of holes; and, with seagrass planting specifications and drawings, replanting of salvaged and donor seagrass. The Restoration Plan shall also include a schedule for completion of each of these steps and specify success criteria for the seagrass restoration. The Restoration Plan will be subject to the review and approval of the National Park Service.
4. Permitting. Settling Defendant shall obtain required permits from the Army Corps of Engineers, Florida Department of Environmental Protection, Miami-Dade County Department of Resource Management, and any other necessary federal, state, or local permits for the work contained in the NPS-approved Restoration Plan. Settling Defendant shall submit all permit applications to the National Park Service for approval prior to submittal to permitting agencies. Settling Defendant shall send all correspondence to permitting agencies via certified mail and expressly referencing the Restoration Plan. Settling Defendant shall provide to the National Park Service copies of all correspondence to and from permitting agencies.
5. Implementation. Under the supervision of the National Park Service, Settling Defendant shall:
  - a. Implement the Restoration Plan.

b. Restoration Completion Report. Within 30 days of completion of the Restoration Plan, prepare and submit to the National Park Service a report on the work that was performed. This report will be subject to the review and approval of the National Park Service.

c. Monitoring. Conduct monitoring and prepare and submit to the National Park Service ten monitoring reports, subject to the review and approval of the National Park Service, on the following schedule: Completion Report plus 3 months; 6 months; 9 months; 12 months; 18 months; 24 months; 36 months; 48 months; 60 months; and Final Combined Observations and Data Synthesis Report.

6. If monitoring shows that the success criteria in the Restoration Plan have not been met, Settling Defendant shall prepare a Corrective Action Plan for submission to, and approval by, the National Park Service, outlining steps that will result in achievement of the success criteria. Within 30 days of approval by the National Park Service of the Corrective Action Plan, Settling Defendant shall implement the Corrective Action Plan until success criteria are met.